

61.665 Medical examiners -- Ruling on disability retirement -- Appeal -- Referral for evaluation and retraining.

- (1) The board shall employ at least three (3) physicians, licensed in the state and not members of the system, upon terms and conditions it prescribes to serve as medical examiners, whose duty it shall be to pass upon all medical examinations required under KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, to investigate all health or medical statements and certificates made by or in behalf of any person in connection with the payment of money to the person under KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, and who shall report in writing to the system the conclusions and recommendations upon all matters referred to them. The board may employ one (1) or more licensed mental health professionals in making recommendations regarding mental impairments.
- (2)
 - (a) Each person requesting disability retirement shall file at the retirement office an application for disability retirement and supporting medical information to report the person's physical and mental condition. The person shall also file at the retirement office a complete description of the job and duties from which he received his last pay as well as evidence that the person has made a request for reasonable accommodation as provided for in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630. The person shall certify to the retirement office that the application for disability retirement and supporting medical information are ready to be evaluated by the medical examiners in accordance with paragraph (d) of this subsection. If, after good faith efforts, the person informs the system that he has been unable to obtain the employment or medical information, the system shall assist the person in obtaining the records and may use the authority granted pursuant to KRS 61.685(1) to obtain the records. If the person fails to file, at the retirement office within one hundred eighty (180) days of the date the person filed his notification of retirement, any of the forms, certifications, or information required by this subsection, the person's application for disability retirement shall be void. Any subsequent filing of an application for disability retirement or supporting medical information shall not be evaluated, except as provided in paragraph (f) of this subsection or KRS 61.600(2).
 - (b) The employer shall file at the retirement office a complete description of the job and duties for which the person was last paid and shall submit a detailed description of reasonable accommodations attempted.
 - (c) The cost of medical examinations and the filing of the medical information, reports, or data with the retirement office shall be paid by the person applying for disability retirement.
 - (d) The system shall select three (3) medical examiners to evaluate the medical evidence submitted by the person. The medical examiners shall recommend that disability retirement be approved, or that disability retirement be denied. If there is evidence of a mental impairment, the medical examiners may request the board's licensed mental health professional to assist in determining the level of the mental impairment.
 - (e) If two (2) or more of the three (3) medical examiners recommend that the

person be approved for disability retirement, the system shall make retirement payments in accordance with the retirement plan selected by the person.

- (f) If two (2) or more of the three (3) medical examiners recommend that the person be denied disability retirement, the system shall send notice of this recommendation by United States first-class mail to the person's last address on file in the retirement office. The person shall have one hundred eighty (180) days from the day that the system mailed the notice to file at the retirement office additional supporting medical information and certify to the retirement office that the application for disability retirement and supporting medical information are ready to be evaluated by the medical examiners or to appeal his denial of disability retirement by filing at the retirement office a request for a formal hearing. Any subsequent filing of an application for disability retirement or supporting medical information shall not be evaluated, except as provided in KRS 61.600(2).
 - (g) If two (2) or more of the three (3) medical examiners recommend that the person be approved for disability retirement based upon the evaluation of additional supporting medical information in accordance with paragraph (f) of this subsection, the system shall make retirement payments in accordance with the retirement plan selected by the person.
 - (h) If two (2) or more of the three (3) medical examiners recommend that the person be denied disability retirement based upon the evaluation of additional supporting medical information in accordance with paragraph (f) of this subsection, the system shall send notice of this recommendation by United States first-class mail to the person's last address on file in the retirement office. The person shall have one hundred eighty (180) days from the day that the system mailed the notice to appeal his denial of disability retirement by filing at the retirement office a request for a formal hearing.
 - (i) The medical examiners shall be paid a reasonable amount by the retirement system for each case evaluated.
 - (j) Notwithstanding the foregoing provisions of this section, the system may pay for one (1) or more medical examinations of the person requested by the medical examiners for the purpose of providing medical information deemed necessary by the medical examiners. The system may require the person to submit to one (1) or more medical examinations.
- (3) (a) Any person whose disability benefits have been reduced, discontinued, or denied pursuant to subsection (2)(f) or (2)(h) of this section may file at the retirement office a request for a formal hearing to be conducted in accordance with KRS Chapter 13B. The right to demand a formal hearing shall be limited to a period of one hundred eighty (180) days after the person had notice of the system's determination, as described in subsection (2)(f) or (2)(h) of this section. The request for a formal hearing shall be filed with the executive director, at the retirement office in Frankfort. The request for a formal hearing shall include a short and plain statement of the reasons the denial of disability retirement is being

contested.

- (b) Failure of the person to request a formal hearing within the period of time specified shall preclude the person from proceeding any further with the application for disability retirement, except as provided in KRS 61.600(2). This paragraph shall not limit the person's right to appeal to a court.
 - (c) The system may require the person requesting the formal hearing to submit to one (1) or more medical or psychological examinations. Notice of the time and place of the examination shall be mailed to the person or his legal representative. The system shall be responsible for the cost of the examination.
 - (d) A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based.
 - (e) All requests for a hearing pursuant to this section shall be made in writing.
- (4) The board may establish an appeals committee whose members shall be appointed by the chair and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board.
 - (5) Any person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing a petition for judicial review in the Franklin Circuit Court in accordance with KRS Chapter 13B.
 - (6) The system, pursuant to regulations, may refer an employee determined by it to be disabled to the Kentucky Office of Vocational Rehabilitation for evaluation and, if appropriate, retraining.
 - (a) The cost of the evaluation and retraining shall be paid by the system in accordance with the regulations established by the board.
 - (b) The member shall perform all acts that are necessary to enroll in and satisfy the requirements of Vocational Rehabilitation as prescribed by the board. This shall include the exchange of confidential information between Kentucky Retirement Systems and the Kentucky Office of Vocational Rehabilitation as necessary to conduct the rehabilitation process. Failure of the member to cooperate with the system or Vocational Rehabilitation may result in his disability allowance being discontinued, reduced, or denied until the member complies with the agency requests. If the refusal continues for one (1) year, all his rights to any further disability allowance shall cease.

Effective: July 13, 2004

History: Amended 2004 Ky. Acts ch. 36, sec. 26, effective July 13, 2004. -- Amended 2003 Ky. Acts ch. 169, sec. 12, effective March 31, 2003. -- Amended 2000 Ky. Acts ch. 385, sec. 24, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 105, sec. 17, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 167, sec. 19, effective July 15, 1996; and ch. 318, sec. 30, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 406, sec. 4, effective July 15, 1994; and ch. 485, sec. 23, effective July 15, 1994. Amended 1992 Ky. Acts ch. 240, sec. 43, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 346, sec. 6, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 349, sec. 42, effective July 15,

1988; and ch. 387, sec. 3, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 90, sec. 21, effective July 15, 1986. -- Amended 1984 Ky. Acts ch. 232, sec. 8, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 423, sec. 11, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 311, sec. 18, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 321, sec. 40. -- Amended 1974 Ky. Acts ch. 128, sec. 28. -- Amended 1972 Ky. Acts ch. 116, sec. 53. -- Created 1956 Ky. Acts ch. 110, sec. 32.